

Affrays, Bengal

ACT No. IV. OF 1840 (Rep., by Act 17 of 1862)

*Passed by the Right Hon'ble the Governor General of India in Council, on the
17th February, 1840.*

An Act for preventing Affrays concerning the possession of Land, and for providing relief in cases of forcible dispossession, within the Presidency of Fort William in Bengal.

I. Whereas it is expedient to remove doubts which have arisen upon the interpretation of Regulation XV. Of 1824, and to amend the Law for preventing Affrays concerning the possession of Land and for giving relief in cases of forcible dispossession, and to extend it to cases not hitherto provided for, and to make it applicable to persons of every class or description, whether British-born subjects or others:

It is hereby enacted, that Regulation XLIX. Of 1793, Regulation XIV. Of 1795, Regulation XXXII. Of 1803, Section 5, Regulation VI. Of 1813, Regulation XV. Of 1824, and Regulation II. Of 1829, of the Bengal Code, together with so much of any Regulations as extends any of the above Regulation or parts of Regulation to any places within the Presidency of Fort William in Bengal, be repealed.

II. And it is hereby enacted, that whenever any Magistrate or other Officers exercising the powers of a Magistrate may be certified that a dispute likely to induce a breach of the peace exists concerning any Land, Premises, Water, Fisheries, Crops, or other produce of Land, within the limits of his jurisdiction, he shall record a Proceeding, stating the grounds of his being so certified, and shall call on all parties Concerned in such dispute (whether Proprietors, dependent Talookdars, Farmers, Under-Farmers, Ryots or other persons) to attend his Court in person, or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subjects of dispute. And the Magistrate or other Officers as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire what party was in possession of the subject to dispute when the dispute arose, and after satisfying himself upon that point, shall record a proceeding declaring the party whom he may decide to have been in such possession to be entitled to retain possession, until ousted by due course of Law, and forbidding all disturbance of possession until such time; and in necessary the Magistrate or other Officer as aforesaid shall put such party into possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent Court.

III. And it is hereby enacted, that if the Magistrate or other Officer as aforesaid shall, in the cases mentioned in Section II. of this Act, be Unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent Court, giving the Collector information of the attachment; and if the subject of dispute be Land, the provision of Regulation V. of 1827 regarding attachment by order of a Zillah or City Court shall apply to attachments by order of a Magistrate or other Officer as aforesaid made under this Section.

IV. And it is hereby enacted, that if any party shall complain to a Magistrate or other Officer as aforesaid, that he has been without authority of Law forcibly dispossessed of any Land, Premises, Water, Fisheries, Crops, or other produce of Land within the jurisdiction of such Magistrate or other Officer as aforesaid, whether the same were possessed by such party as Proprietor, dependent Talookdar, Farmer, Under-Farmer, Ryot or otherwise, the Magistrate or other Officer as aforesaid shall require the party or

parties complained against, and any other parties concerned, to appear and make defence in person or by agent within a reasonable time ; and if, after the examination of the necessary witnesses and documents, the complaint appears to him to be substantiated, he shall record a proceeding, ordering the party complaining to be put again into possession be determined by a competent Court ; provided that no such order shall be passed unless the party complaining of having been so dispossessed prefer hi claim within one month from the time of such dispossession.

V. And it is herby enacted, that if, in cases instituted under this Act, the subject of dispute be newly formed Land, whereof it shall appear to the Magistrate or other Officer as aforesaid that not party has ever had possession, the Magistrate or other Officer as aforesaid shall award possession to the party whom the right of possession belongs according to law or custom, and shall maintain that party in possession until the right to possession be determined by a competent Court.

VI. And it is hereby enacted, that if a dispute arises concerning the right of use of any Land or Water, the Magistrate or other Officer as aforesaid within whose jurisdiction the subject of dispute lies may inquire into the matter, and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class person, the said Magistrate or other Officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class or persons, as the case may be, until the party claiming such possession shall obtain the decision of a competent Court adjudging him to be entitled to such exclusive possession. Provided that the Magistrate or other Officer as aforesaid shall not pass any such order as aforesaid, if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within three months from the date of the institution of the inquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised without discontinuance before the dispossession of which complaint is made.

VII. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use, given under this Act, or refusing obedience thereto, or knowingly contravening the same, as long as it shall remain in legal force, shall, together with all persons aiding and abetting, be liable, on conviction before a Magistrate or other Officer with the powers of a Magistrate, to be sentenced to simple imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, commutable if not paid to a period of simple imprisonment not exceeding six months, or to both imprisonment and fine as aforesaid.

VIII. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner under the Regulations and Laws that are not or may be in force relating to appeals from the orders of Magistrates or other Officers exercising the powers of Magistrate.

IX. And it is hereby enacted, that in cases instituted under this Act the Magistrate of other Officer as aforesaid is authorized, with the consent of all the parties, to refer the matter in dispute, so far as it is cognizable under this Act, to an arbitrator or arbitrators for decision, whose award shall be executed as if it were the award of such Magistrate or other Officer a aforesaid

X. And it is hereby provided that nothing in this Act contained shall affect the legal exercise of any right of attachment or seizure vested by law in any parties.

XI. Ant it is hereby further provided, that this Act shall not extend to any place beyond the limits of the Presidency of Fort William in Bengal; or to the Settlements of Prince of Wales' Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's Supreme Court at Calcutta.